APPEAL NO. 020928
FILED MAY 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 16, 2001; a new decision was issued after the decision was remanded in Texas Workers' Compensation Commission Appeal No. 012471, decided November 30, 2001. The hearing officer reconsidered a portion of her decision. She determined that the respondent's (claimant) _____, injury did not extend to include depression or a cervical or lumbar injury (including aggravation of her previous injury). However, she held that it did include bilateral carpal tunnel syndrome (CTS). She gave presumptive weight to the designated doctor's impairment rating (IR), to the extent that it rated those conditions that were part of the injury, and found that the claimant's IR was 14%. Finally, she held that the appellant (carrier) did not waive the right to dispute the cervical and lumbar injuries.

The carrier has appealed the determination that CTS is part of the injury, and appealed the IR to the extent that an upper extremity IR was included. The claimant has neither responded nor appealed; the ombudsman who assisted her has filed and signed a document purporting to be an appeal that has not been signed by the claimant.

DECISION

We affirm the hearing officer's decision on all timely appealed points.

An ombudsman is not a legal representative, only an assistant. The 1989 Act and applicable rules require a "party" to file an appeal within the time limits set out in the 1989 Act. Consequently, the document signed and filed only by the ombudsman cannot be considered as an appeal by the claimant.

On the appeal on the extent of injury to include bilateral CTS, we cannot agree that the hearing officer erred. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The record in this case presented conflicting evidence for the hearing officer to resolve.

In considering all the evidence in the record, we cannot agree that the findings of

the hearing officer that the injury included CTS, or adopting the report of the designated doctor to the extent that it rated the accepted and adjudicated parts of the injury, are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **HIGHMARK CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge